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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,145	02/06/2004	Donnie Rose SR.	RAR500.01	8436

7590 09/17/2004

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/774,145	ROSE, DONNIE	
	Examiner	Art Unit	
	Kurt Rowan	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-6-2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In both claims 15 and 20 it is not clear if a word has been omitted or does applicant mean that the vertical support member has a tubular shape. Please clarify/correct.

3. Claim 15 recites the limitation "said vertical support member tubular" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

4. Claim 20 recites the limitation "said vertical support member tubular" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6,7, 10-15, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al.

The patent to Kitterman shows an insect destroying device having an elongated vertical support 12 having a first end and a second end (not labeled). Kitterman shows a

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means for supporting 14 the vertical support member. Does applicant wish to invoke 35 USC 112, sixth paragraph for means plus function ? Kitterman shows an insect attracting light 60. Kitterman shows an insect immobilizing element with an adhesive surface 30 mounted on a tubular member 100. The insect immobilizing element is mounted on the vertical support member. Kitterman shows a source of electrical power 55 connected to the insect attracting light. In reference to claims 1, 15, Kitterman shows all of the elements recited with the exception of the panel member. Kitterman shows a tubular member which could be considered as a curved panel, but, at any rate, it would have been obvious to employ a panel member since merely one equivalent member is being substituted for another and the function is the same. See *In re Rose*, 105 USPQ 137. In reference to claim 2, Kitterman shows the first end of the vertical support member as being tubular. In reference to claim 3, Kitterman shows a post 16 which can be considered to have a lower pole section and an upper pole section. The lower pole section is connected to the ground support member 14 and the upper pole section is connected to the insect immobilizing element. The division between the two pole sections can be arbitrarily taken to be at about the mid-point of the post. In reference to claim 4, Kitterman shows the support means as a ground support member 14 configured to cooperatively engage the first end of the vertical support member. In reference to claim 6, Kitterman shows the support means a first end shaped and configured to attach the vertical support member to a support surface. In reference to claim 7, Kitterman shows an insect attracting light as light bulb 60. In reference to claim 10, Kitterman can inherently replace the panel member. In reference to claim 11,

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Kitterman shows the adhesive surface comprising a sticky surface. In reference to claims 12 and 18, Kitterman shows a battery 55. In reference to claims 13, 14 and 19, Kitterman shows means for recharging the battery as a solar panel 62 mounted on the second end of the vertical support member noting Figs. 8 and 11.

7. Claims 5, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al. as applied to claim 1 above, and further in view of Petry.

The patents to Kitterman and Petry show insect trapping devices. Kitterman has been discussed above and does not show the ground support member being configured to be partially inserted into the support surface. Figure 7 of Kitterman shows the vertical support member being inserted into the ground. The patent to Petry shows a ground support member V configured to be inserted into the support surface and a vertical support member U configured to be attached to the ground support member by connector X. In reference to claims 5, 16, 20, it would have been obvious to provide Kitterman with a ground support member as shown by Petry since merely one ground support member is being substituted for another and the function is the same.

8. Claims 8-9, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitterman et al. as applied to claim 1 above, and further in view of Cook.

The patents to Kitterman and Cook show insect trapping devices. Kitterman has been discussed above and does not show the panel member as a mesh screen having a plurality of openings. The patent to Cook shows an insect trap having a panel member 28 in Fig. 4 made from a coarse screening having a plurality of openings and coated with an adhesive substance 112. In reference to claims 8 and 17, it would have been

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obvious to provide Kitterman with a panel member comprising a mesh screen as shown by Cook since merely one panel is being substituted for another and the function is the same. In reference to claim 17, it is not clear if the opening in Cook are configured to allow small flying insects to pass therethrough or not. However, it would have been obvious to configure the openings to allow small non-target insects to fly through the openings since routine experimentation would be used to determine the size of the openings absent a showing of unexpected results.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Ray, Lord, Wilmot, and Manahan show other insect traps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Kurt Rowan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR